

Assembly Bill No. 1351

CHAPTER 525

An act to amend Section 399.12.5 of the Public Utilities Code, relating to energy.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, Blakeslee. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year.

Under existing law, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is electricity from an eligible renewable resource for purposes of the California Renewables Portfolio Standard Program if certain requirements are met. One of these requirements is that the hydroelectric generation facility has been certified by the State Water Resources Control Board pursuant to the federal Clean Water Act or by a regional board to which the board has delegated authority.

This bill would, for a hydroelectric generation facility that is not located in California, authorize the applicable state board, agency, or regional board having that authority, to issue the certification pursuant to the federal Clean Water Act. The bill would add a requirement that the facility be owned by a retail seller or local publicly owned electric utility.

The people of the State of California do enact as follows:

SECTION 1. Section 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) Notwithstanding subdivision (c) of Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible

renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.

(b) Notwithstanding subdivision (c) of Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) (A) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is not subject to certification because there is no potential for discharge into waters of the United States.

(B) If the hydroelectric facility is not located in California, the certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) may be received from the applicable state board or agency or from a regional board to which the state board has delegated authority to issue the certification.

(3) The hydroelectric generation facility is owned by a retail seller or a local publicly owned electric utility, was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller or local publicly owned electric utility. For purposes of this paragraph, “long-term financial commitment” means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.

(c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with

Section 25740) of Division 15 of the Public Resources Code), or a successor program.

O